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8 **BEFORE THE**
9 **BOARD OF PHARMACY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 4179

13 **APRIL DIANE MC ENTEE**
150 W. Hillcrest Blvd., #1
14 Inglewood, CA 90301

A C C U S A T I O N

16 Pharmacy Technician Registration.
17 No. TCH 89515

Respondent.

18 Complainant alleges:

19 **PARTIES**

20 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

21 2. On or about March 4, 2009, the Board of Pharmacy (Board) issued Pharmacy
22 Technician Registration No. TCH 89515 to April Diane Mc Entee (Respondent). The Pharmacy
23 Technician Registration was in full force and effect at all times relevant to the charges brought
24 herein and will expire on August 31, 2012, unless renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board under the authority of the following
27 laws. All section references are to the Business and Professions Code unless otherwise indicated.

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STATUTORY PROVISIONS

4. Section 118, subdivision (b) provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

5. Section 490 states, in pertinent part:

"(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

"(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.

"(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code."

6. Section 4060 states, in pertinent part:

"No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,

1 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified
2 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly
3 labeled with the name and address of the supplier or producer."

4 7. Section 4300 provides, in pertinent part, that every license issued by the Board is
5 subject to discipline, including suspension or revocation.

6 8. Section 4301 of the Code states:

7 "The board shall take action against any holder of a license who is guilty of unprofessional
8 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.
9 Unprofessional conduct shall include, but is not limited to, any of the following:

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11 "(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or
12 corruption, whether the act is committed in the course of relations as a licensee or otherwise, and
13 whether the act is a felony or misdemeanor or not.

14 "(g) Knowingly making or signing any certificate or other document that falsely represents
15 the existence or nonexistence of a state of facts.

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17 "(j) The violation of any of the statutes of this state, or any other state, or of the United
18 States regulating controlled substances and dangerous drugs.

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20 "(l) The conviction of a crime substantially related to the qualifications, functions, and
21 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
22 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
23 substances or of a violation of the statutes of this state regulating controlled substances or
24 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
25 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
26 The board may inquire into the circumstances surrounding the commission of the crime, in order
27 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
28 or dangerous drugs, to determine if the conviction is of an offense substantially related to the

1 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
2 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
3 of this provision. The board may take action when the time for appeal has elapsed, or the
4 judgment of conviction has been affirmed on appeal or when an order granting probation is made
5 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
6 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
7 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
8 indictment.

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10 "(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
11 violation of or conspiring to violate any provision or term of this chapter or of the applicable
12 federal and state laws and regulations governing pharmacy, including regulations established by
13 the board or by any other state or federal regulatory agency."

14 9. Section 4324 of the Code states:

15 "(a) Every person who signs the name of another, or of a fictitious person, or falsely
16 makes, alters, forges, utters, publishes, passes, or attempts to pass, as genuine, any prescription
17 for any drugs is guilty of forgery and upon conviction thereof shall be punished by imprisonment
18 in the state prison, or by imprisonment in the county jail for not more than one year.

19 "(b) Every person who has in his or her possession any drugs secured by a forged
20 prescription shall be punished by imprisonment in the state prison, or by imprisonment in the
21 county jail for not more than one year."

22 REGULATORY PROVISIONS

23 10. California Code of Regulations, title 16, section 1770 states, in pertinent part:

24 "For the purpose of denial, suspension, or revocation of a personal or facility license
25 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a
26 crime or act shall be considered substantially related to the qualifications, functions or duties of a
27 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a

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1 licensee or registrant to perform the functions authorized by his license or registration in a manner
2 consistent with the public health, safety, or welfare."

3 COST RECOVERY

4 11. Section 125.3 states, in pertinent part, that the Board may request the administrative
5 law judge to direct a licensee found to have committed a violation or violations of the licensing
6 act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the
7 case.

8 CONTROLLED SUBSTANCE

9 12. The following definitions apply to the controlled substances that will be described in
10 this Accusation.

11 a. "Norco," is the brand name for Hydrocodone and Acetaminophen. It is a Schedule III
12 controlled substance as designated by Health and Safety Code section 11056, subdivision (e) and
13 is categorized as a dangerous drug pursuant to section 4022.

14 b. "Vicodin," is the brand name for Hydrocodone and Acetaminophen. It is a Schedule
15 III controlled substance as designated by Health and Safety Code section 11056, subdivision
16 (e)(7) and is categorized as a dangerous drug according to section 4022.

17 FIRST CAUSE FOR DISCIPLINE

18 (Conviction of a Substantially Related Crime)

19 13. Respondent is subject to disciplinary action under section 4301, subdivision (l) and
20 490, in conjunction with California Code of Regulations, title 16, section 1770, in that
21 Respondent was convicted of a crime substantially related to the qualifications, functions, and
22 duties of a pharmacy technician. On or about May 11, 2011, after pleading nolo contendere,
23 Respondent was convicted of one misdemeanor count of violating Business and Professions Code
24 section 4324, subdivision (a) [forging a prescription] in the criminal proceeding entitled *The*
25 *People of the State of California v. April Diane Mc Entee* (Super. Ct. Los Angeles County, 2011,
26 No. 1WA00320). The Court sentenced Respondent to serve 1 day in Los Angeles County Jail
27 and placed her on 12 months probation, with terms and conditions. The circumstances
28 surrounding the conviction are that at the time of the misconduct for which she was convicted,

1 Respondent had been employed as a pharmacy technician at Walgreens, in Los Angeles, CA. On
2 or about December 29, 2010, the Walgreen Loss Prevention Officer reported to Los Angeles
3 Police Department that Respondent was calling in fake prescriptions by pretending to be a doctor,
4 writing false prescriptions, and taking possession of the drugs. Further investigation revealed that
5 Respondent on several occasions had called in prescriptions for 120 tablets of Norco at four
6 different stores. Respondent had picked up all four prescriptions. Respondent admitted to the
7 officer that in 2010 she had called in a prescription for her husband for Vicodin, using a name of
8 a doctor she found in the database. She also admitted to calling in several prescriptions for Norco
9 using different doctor names and by changing her profile. Respondent was subsequently arrested
10 for violating Health and Safety Code section 11150 [unauthorized writing/dispensing of
11 prescription].

12 **SECOND CAUSE FOR DISCIPLINE**

13 **(Acts Involving Dishonesty, Fraud, or Deceit)**

14 14. Respondent is subject to disciplinary action under section 4301, subdivision (f), in
15 that while employed as a pharmacy technician at Walgreen, in Los Angeles, CA, Respondent
16 committed acts involving dishonesty, fraud, or deceit with the intent to substantially benefit
17 herself, or substantially injure another. Complainant refers to, and by this reference incorporates,
18 the allegations set forth above in paragraph 13, as though set forth fully

19 **THIRD CAUSE FOR DISCIPLINE**

20 **(Forged Prescriptions)**

21 15. Respondent is subject to disciplinary action under section 4301, subdivision (g), for
22 violating section 4324, subdivision (a), in that while employed as a pharmacy technician at
23 Walgreens, in Los Angeles, CA Respondent, by her own admission, forged prescriptions.
24 Complainant refers to, and by this reference incorporates, the allegations set forth above in
25 paragraph 13, as though set forth fully.

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1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Illegally Obtained or Possessed Controlled Substances)**

3 16. Respondent is subject to disciplinary action under section 4301, subdivision (j) and
4 (o), for violating sections 4060, and 4324, subdivision (b), in that while employed as a pharmacy
5 technician at Walgreens, in Los Angeles, CA, Respondent illegally obtained or possessed
6 controlled substances without a valid prescription. Complainant refers to, and by this reference
7 incorporates, the allegations set forth above in paragraph 13, as though set forth fully.

8 **PRAYER**

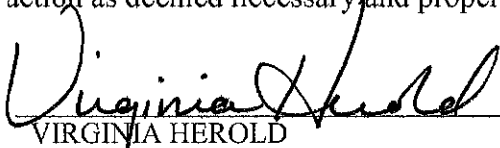
9 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
10 and that following the hearing, the Board issue a decision:

11 1. Revoking or suspending Pharmacy Technician Registration No. TCH 89515, issued
12 to Respondent;

13 2. Ordering Respondent to pay the Board the reasonable costs of the investigation and
14 enforcement of this case, pursuant to section 125.3; and

15 3. Taking such other and further action as deemed necessary and proper.

16 DATED: 11/19/12

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18 VIRGINIA HEROLD
19 Executive Officer
20 Board of Pharmacy
21 Department of Consumer Affairs
22 State of California
23 Complainant

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